



December 20, 2000

Mr. Peter K. Rusek  
Sheehy, Lovelace & Mayfield, P.C.  
Attorneys and Counselors at Law  
510 North Valley Mills Drive, Suite 500  
Waco, Texas 76701

OR2000-4795

Dear Mr. Rusek:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142469.

The Waco Independent School District (the "district"), which you represent, received a request for copies of "all documents received by [the district] from other school districts concerning" the requestor, except for documents submitted to the district by the requestor. The request also seeks copies of "any letter by [the district to any school district] requesting open records documents concerning" the requestor, including "applications, previous employment, or any other matter." You have submitted for our review representative samples of the information that is responsive to the request, and among other arguments, you claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.<sup>1</sup>

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<sup>1</sup>You state that "the nature of the information requested is clear from the request for information itself, without necessity of reviewing all the requested information." Section 552.301(e)(1)(D) of the Act requires the district to submit to this office the specific information requested, or representative samples of that information if a voluminous amount was requested. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

As to the request for documents concerning the requestor and received by the district from other school districts, you argue that the district should not have to provide this information because it is otherwise available by means of a request to the other school districts. We disagree. See Gov't Code § 552.002(a)(1) (defining public information, in part, as information collected, assembled, or maintained by a governmental body in connection with the transaction of official business). You concede that the district is a governmental body under the Act. The district is thus subject to the disclosure requirements of the Act. No claim is made that the information at issue is not "public information" as defined in section 552.002 of the Act, and we must assume from our review of the submitted samples that the district collected and maintains this information in connection with the transaction of its official business. Because the district is subject to the Act's disclosure requirements with reference to the information requested, the fact that other entities may also hold this information is irrelevant. Moreover, a release of information by other school districts to the requestor would not inform the requestor of what information from these other school districts is also held by the district. Thus, absent an exception under the Act to required disclosure of the information responsive to the request, the Act requires the district to release the information to the requestor. We therefore next address your assertion that the responsive information is excepted from required disclosure by section 552.103.

Section 552.103 excepts from disclosure information:

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

[Information is excepted from disclosure] only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). Section 552.103 was intended to prevent the use of the Act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 at 4 (1989). The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). To show that the litigation exception is applicable, the district must demonstrate that (1) litigation was pending or reasonably anticipated at the time of the request and (2) the information at issue is related to that litigation. See Gov't Code § 552.103(a), (c); see also *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You assert that litigation involving the district was reasonably anticipated at the time of the request. To demonstrate that litigation is reasonably anticipated, the district must furnish evidence that, at the time of the request, litigation was realistically contemplated and was more than mere conjecture. Gov't Code § 552.103(c);

Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). This office has found that where a governmental body receives a demand letter from an attorney which threatens suit, litigation may be reasonably anticipated for purposes of section 552.103. Open Records Decision No. 346 at 2 (1982). This office has also found that the fact that a prospective plaintiff has hired an attorney who then makes a request under the Act is alone insufficient to trigger the protection of section 552.103. Open Records Decision No. 361 at 2 (1983). This office has found that litigation was reasonably anticipated for purposes of section 552.103 when the potential opposing party filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). Open Records Decision No. 336 at 1 (1982).

In support of your contention that the district reasonably anticipated litigation at the time the request was received, you have provided for our review letters from the requestor and his attorney and EEOC complaints filed by the requestor. Under the totality of the circumstances, we believe in this instance that the district has demonstrated that litigation was reasonably anticipated at the time of the request. As to the second prong of the above-stated test, upon careful review of the submitted information, we also find that this information relates to the anticipated litigation. Except as otherwise noted below, the district may therefore withhold the responsive information pursuant to section 552.103 of the Act.

Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, to the extent the opposing party in the anticipated litigation has seen or had access to any of the information responsive to the request, there is no justification for withholding that information from the requestor pursuant to section 552.103. The submitted samples include information that the requestor provided to the district or to another school district. As this information came from the requestor, it is not excepted by section 552.103 and must be released to the requestor.<sup>2</sup> Likewise, section 552.103 does not except any other responsive information which has previously been made available to the requestor or his attorney, and such information must be released. For example, the information includes a letter to the requestor, which evidently has previously been made available to him and therefore is not excepted by section 552.103. We also note that the applicability of section 552.103 ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>2</sup>Some of the documents at issue contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the district receives a future request for this information from an individual other than the requestor or his authorized representative, the district should again seek our decision.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

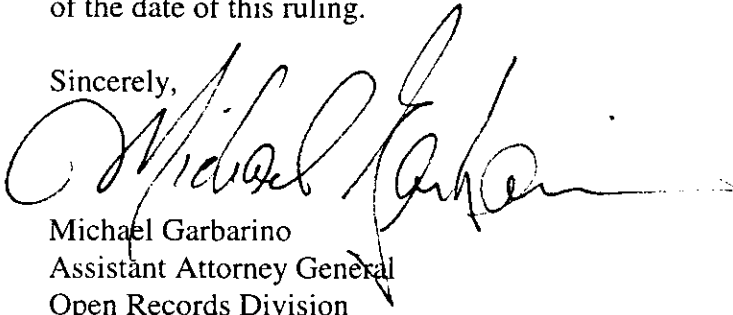
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID#142469

Encl. Submitted documents

cc: Mr. Ronald Green  
2412 Pecan Valley  
Cleburne, Texas 76031  
(w/o enclosures)